

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6278 of 1997

With

SPECIAL CIVIL APPLICATION No.6279 Of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE D.G.KARIA sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? yes
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?  
2 to 5 No.

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PATEL JASUBHAI ARJANBHAI VAGHASIA

Versus

STATE OF GUJARAT

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Appearance:

M/S THAKKAR ASSOC. for Petitioner

MR.A.J.DESAI,ADDL.GOVERNMENT PLEADER for Respondent

No. 1,2 and 3.

MR SUNIL C PATEL for Respondent No. 4

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CORAM : MR.JUSTICE D.G.KARIA

Date of decision: 21/10/97

ORAL JUDGEMENT

By both the petitions under Article 226 of the Constitution of India, the petitioners have questioned

the legality and validity of their detention orders dated 7.7.1997, passed by the second respondent in exercise of his powers under section 3(2) of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 (for short "the said Act") with a view to preventing the detainees from acting in any manner prejudicial to the maintenance of supply of commodities essential to the community.

The petitions being similar and raising the same or identical points are being disposed of by this common judgment.

I have heard the learned Counsel, Shri H.R. Prajapati, for the petitioners, and Mr.A.J.Desai, learned Addl. Public Prosecutor for respondents Nos.1 to 3, and Mr.Sunil C.Patel, for respondent No.4-the Union of India.

The petitioners have raised several points against their respective detentions. However, the petitions are to be allowed on the ground that there is delay in considering the representations of the petitioners and as such the continued detention of the petitioners would be in violation of Art.22(5) of the Constitution of India. It is not in dispute that the petitioners submitted their representations dated August 19,1997 to the Hon'ble Minister of Food and Civil Supplies, Gandhinagar by Speed Post. It was received on 20.9.1997 in the concerned Ministry at Gandhinagar. Mr.P.D.Shah, Under Secretary, Food, Civil Supplies and Consumer Affairs Department, Sachivalaya, Gandhinagar, has filed the affidavit contending, inter alia, that after receipt of the representations on behalf of the petitioners, the same were handed over to some relatives of the petitioners-detenues, who had met the concerned Minister on 20.8.1997. Thereafter, the representations are not traceable in the office of the Additional Chief Secretary, Food, Civil Supplies and Consumer Affairs Department. It is contended by Mr.A.J.Desai, the learned Addl. Public Prosecutor, that the representations were handed over to the relatives of the petitioners on 20.8.1997 for submitting the same before the Additional Chief Secretary, Food, Civil Supplies and Consumer Affairs Department, Gandhinagar. There is nothing on the record, nor it has been pointed out in the affidavit of Mr.P.D.Shah as to who were such relatives of the petitioners to whom the representations were handed over

and if the representations were so handed over to the relatives of the detenues, they would have certainly submitted the same before the concerned authority in the department and there could not be any occasion of not tracing out the representations. The relatives of the detenues would obviously be interested in getting the representations disposed of. Besides, the concerned Ministry should have adopted the normal official procedure of sending the representations by the concerned department instead of handing it over to "some relatives" of the petitioners-detenues. The particulars or details of "some relatives" of the petitioners are not available on record, nor any signature of such handing it over to the relatives is obtained. In the facts and circumstances of the case, the representations of the petitioners dated 19.8.1997 have remained unattended and they have not been disposed of so far. The continued detention of the petitioners is, therefore, illegal.

In the above view of the matter, both the petitions are allowed. The impugned orders of detention are hereby quashed. The detenues, Patel Jasubhai Arjanbhai Vaghasia and Gondalia Pravin Popatbhai, are ordered to be released forthwith, if they are not required in any other matter. Rule is accordingly made absolute, in each of the petitions.

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